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10/765,569	01/28/2004	Nikolay K. Ilchev	08935-302001 / M-5090	8130

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MINNEAPOLIS, MN 55440-1022

EXAMINER

WEINER, LAURA S

ART UNIT	PAPER NUMBER
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1745

MAIL DATE	DELIVERY MODE
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05/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/765,569

Applicant(s)

ILTCHEV ET AL.

Examiner

Laura S. Weiner

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1745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 19-42 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-16 is/are allowed.
- 6) ☒ Claim(s) 1,7-10,17 and 18 is/are rejected.
- 7) ☒ Claim(s) 2-6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6-04; 7-05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group I, claims 1-18 in the reply filed on 3-16-07 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 19-42 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 3-16-07.

Claim Rejections - 35 USC § 112

3. Claims 9-10, 17-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 9-10 and 17-18 are rejected because it is unclear what is meant by "lacking the particle". Also, there is no antecedent basis for "the particle".

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 7-8 are rejected under 35 U.S.C. 102(b) as being anticipated by

Taucher et al. (WO 93/12551).

Taucher et al. teaches an alkaline manganese dioxide-zinc battery comprising a cathode comprising manganese dioxide active material, a conductive powder, graphite and an additive compound which is at least 3% mass such as barium oxide, barium hydroxide or barium sulphate. Figure 1 shows an alkaline cell. Taucher et al. teaches on page 5, that the cell includes a zinc anode, a separator and an electrolyte comprising KOH. Taucher et al. teaches on page 1, that electrolytic manganese dioxide can be used.

6. Claims 1, 7-8 are rejected under 35 U.S.C. 102(b) as being anticipated by

Bennett et al. (WO 00/30198).

Bennett et al. teaches a cell comprising an anode, a cathode and an alkaline electrolyte where the anode or the cathode comprises barium compound such as barium sulphate or barium hydroxide as an additive. The anode comprises zinc and the cathode comprises electrolytic manganese dioxide and graphite.

Claim Rejections - 35 USC § 103

7. Claims 9-10 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the

alternative, under 35 U.S.C. 103(a) as obvious over Taucher et al. (WO 93/12551) or

Bennett et al. (WO 00/30198).

Taucher et al. teaches an alkaline manganese dioxide-zinc battery comprising a cathode comprising manganese dioxide active material, a conductive powder, graphite and an additive compound which is at least 3% mass such as barium oxide, barium hydroxide or barium sulphate. Figure 1 shows an alkaline cell. Taucher et al. teaches on page 5, that the cell includes a zinc anode, a separator and an electrolyte comprising KOH. Taucher et al. teaches on page 1, that electrolytic manganese dioxide can be used.

Bennett et al. teaches a cell comprising an anode, a cathode and an alkaline electrolyte where the anode or the cathode comprises barium compound such as barium sulphate or barium hydroxide as an additive. The anode comprises zinc and the cathode comprises electrolytic manganese dioxide and graphite.

Since Taucher et al. and Bennett et al. teaches the same battery comprising a cathode comprising an electrolytic MnO₂, a conductive material and a barium salt, an anode comprising zinc and an alkaline electrolyte then inherently the same service life of the battery in an intermittent discharge test is at least 2% or 3% longer than the surface life of a battery lacking the particle must also be obtained.

In addition, the presently claimed property of the same service life of the battery in an intermittent discharge test is at least 2% or 3% longer than the surface life of a battery lacking the particle would have obviously have been present once the Taucher et al. or Bennett et al. product is provided. *In re Best*, 195 USPQ 433 (CCPA 1977).

Allowable Subject Matter

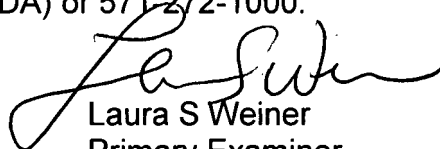
8. Claims 11-16 are allowed.
9. Claims 2-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura S. Weiner whose telephone number is 571-272-1294. The examiner can normally be reached on M-F (6:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Laura S Weiner
Primary Examiner
Art Unit 1745

April 30, 2007